

**STATE OF INDIANA  
BEFORE THE BOARD OF FIREFIGHTING PERSONNEL  
STANDARDS AND EDUCATION**

IN RE:	)	CAUSE NO.
	)	
ROSS, K.	)	DHS-1713-BFPSE-001
	)	
	)	
	)	

**NOTICE OF NON-FINAL ORDER**

You are hereby notified that the attached document entitled **Findings of Fact, Conclusions of Law, and Non-Final Order** has been entered by the Administrative Law Judge in accordance with Indiana Code § 4-21.5-3-27.

The ultimate authority in this matter is the Board of Firefighting Personnel Standards and Education. Indiana Code § 4-21.5-3-29(d) requires any party seeking to preserve an objection to this order for judicial review to file a written objection that:

1. identifies the basis of the objection with reasonable particularity; and
2. is filed with the Board within fifteen days (or any longer period set by statute) after this order is served.

In the absence of an objection from a party or notice from the Board of its intent to review any issue related to this order, the Board shall affirm this order in accordance with Ind. Code § 4-21.5-3-29(c). **This order will be considered by the Board at its next meeting on October 2, 2017 at 6:00 p.m. (EDT) at the Wayne Township Fire Department, 700 N. High School Road, Indianapolis, IN 46214.**

Date: September 14, 2017

  
HON. CHELSEA E. SMITH  
Administrative Law Judge  
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A copy of the foregoing was served by U.S. Postal Service upon the following parties and attorneys of record:

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604 Paddlebrook Drive  
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and personally served on the following attorney of record:

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FOR THE PETITIONER, PRO SE  
Keith L. Ross  
Danville, IN

REPRESENTATIVE FOR RESPONDENT  
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**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND NON-FINAL ORDER**

Petitioner in this matter, Keith L. Ross, appealed the decision of the Respondent, the Indiana Board of Firefighting Personnel Standards and Education, to permanently revoke Petitioner's Instructor I certification. Based on the evidence presented and for the reasons set forth below, the Administrative Law Judge concludes that Petitioner's Instructor I certification should be suspended for one (1) year. After the suspension period, Petitioner will be eligible to recertify for Instructor I per 655 Ind. Admin. Code 1-2.1-2.1 or may have his Instructor I reinstated per Ind. Code § 22-12-7-9 after satisfying the requirements in 655 Ind. Admin. Code 1-2.1-19(a), and will be placed on probation for one (1) year following recertification or reinstatement.

**PROCEDURAL BACKGROUND**

On March 16, 2017, the Respondent issued an order permanently revoking Petitioner's Instructor I and Instructor II/III certifications. Petitioner requested administrative review on March 31, 2017, and the Respondent granted Petitioner's appeal as timely on April 3, 2017. The undersigned Administrative Law Judge ("ALJ") was appointed to adjudicate the appeal.

An initial prehearing conference was held in this matter on May 10, 2017. Petitioner appeared on his own behalf and Justin Guedel appeared on behalf of the Respondent. During the initial prehearing conference, the parties advised the ALJ that informal resolution would not be possible in this case and requested to submit their evidence and arguments by written briefs and

documentary evidence. The ALJ approved of this form of proceeding and set a briefing schedule. Respondent timely filed its brief and evidence on June 9, 2017, and Petitioner timely filed his brief and evidence on July 10, 2017.

### **BURDEN AND STANDARDS OF PROOF**

Indiana Code § 4-21.5-3-14(c) provides that at each stage of an administrative review, “the agency or other person requesting that an agency take action or asserting an affirmative defense specified by law has the burden of persuasion and the burden of going forward with the proof of the request or affirmative defense.” That burden rests upon the agency when the agency is, in essence, prosecuting a petitioner for a regulatory violation. See Peabody Coal Co. v. Ralston, 578 N.E.2d 751, 754 (Ind. Ct. App. 1991). However, when the petitioner is seeking an agency action or claims entitlement to an exemption from regulatory requirements, the burden rests upon the petitioner. See Ind. Dep’t of Natural Res. v. Krantz Bros. Constr. Corp., 581 N.E.2d 935, 938 (Ind. Ct. App. 1991).

Proceedings held before an ALJ are de novo, per Ind. Code § 4-21.5-3-14(d), which means the ALJ does not—and may not—defer to an agency’s initial determination. Ind. Dep’t of Natural Res. v. United Refuse Co., Inc., 615 N.E.2d 100, 104 (Ind. 1993). Instead, in its role as fact-finder, the ALJ must independently weigh the evidence in the record and matters officially noticed, and may base its findings and conclusions only upon that record. Id.; see also Ind. Code § 4-21.5-3-27(d). At a minimum, the ALJ’s findings “must be based upon the kind of evidence that is substantial and reliable.” Ind. Code § 4-21.5-3-27(d). “[S]ubstantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support the decision.” St. Charles Tower, Inc. v. Bd. of Zoning Appeals, 873 N.E.2d 598, 601 (Ind. 2007). It is “something more than a scintilla, but something less than a preponderance of the evidence.” State ex rel. Dep’t of Natural Res. v. Lehman, 177 Ind. App. 112, 119, 378 N.E.2d 31, 36 (1978) (internal footnotes omitted).

When an agency action puts a Fourteenth Amendment interest at risk, however, a higher standard of proof is required. Pendleton v. McCarty, 747 N.E.2d 56, 64–65 (Ind. Ct. App. 2001), trans. denied. “[I]n cases involving the potential deprivation of . . . protected property interests, the familiar ‘preponderance of the evidence standard’ [is] used.” Id. at 64. The higher “clear and convincing” standard is required when a protected liberty interest is at stake. Id. That is to say, this standard applies when “individual interests at stake in a particular state proceeding are both

‘particularly important’ and ‘more substantial than the mere loss of money’ or necessary to preserve fundamental fairness in a government-initiated proceeding that threaten[s] an individual with ‘a significant deprivation of liberty’ or ‘stigma’.” Burke v. City of Anderson, 612 N.E.2d 559, 565 (Ind. Ct. App. 1993), trans. denied (quoting In re Moore, 453 N.E.2d 971, 972 (Ind. 1983)); see also Pendleton, 747 N.E.2d at 64.

### FINDINGS OF FACT

Present in the record of proceedings is Respondent’s March 16, 2017 order permanently revoking Petitioner’s Instructor I and Instructor II/III certifications, Petitioner’s request for administrative review, Respondent’s letter granting the appeal as timely, and the orders and notices issued by the ALJ.

Respondent also submitted as evidence Olen Miller’s complaint, the Keith Ross interview summary, the Olen Miller interview summary, the Levi Marshall interview summary, the Jacob Willis interview summary, a summary of the second Keith Ross interview, the Indiana Department of Homeland Security’s recommendation to the Respondent, minutes from the Respondent’s February 27, 2017 meeting, the Respondent’s order permanently revoking Petitioner’s Instructor I certification, Petitioner’s request for administrative review, description of the Instructor I Course Curriculum, and the affidavit of John M. Buckman III.<sup>1 2</sup>

Petitioner submitted as evidence Petitioner’s request for administrative review, a letter from Chief Bill Zeunik, a letter from Assistant Chief Matt Stewart, a letter from Chief Mark Morgan, a letter from Assistant Chief Rob Roberts, a letter from Assistant Chief Keith Rinehart, a letter from Chief Dustin Strahl, a letter from Chief Kevin Basham, a letter from Chief Tim Williams, the Keith Ross interview summary, and the Olen Miller interview summary.<sup>3</sup>

Based solely on that evidentiary record and any additional items specifically noted below, the ALJ hereby issues the following findings of fact:

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<sup>1</sup> These Exhibits are marked and—in the absence of any objections—admitted as Respondent’s Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12.

<sup>2</sup> The interview summaries that Respondent submitted as evidence (Resp. Ex. 2-6) are admitted, as Petitioner did not object to them, but the manner in which these interviews were documented is confusing; it is often unclear who authored the document and who is asking the questions. In addition, the interviews appear to be taken within a similar timeframe but do not follow a uniform format and do not all contain the same vital information, such as who is present, the date, time, location, whether the interview is recorded, etc. This evidence will still be given due weight, based on its credibility.

<sup>3</sup> These Exhibits are marked and—in the absence of any objections—admitted as Petitioner’s Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11.

1. Petitioner has been in the fire service for approximately 28 years; he is currently a Lieutenant with the Pittsboro Fire Department in Pittsboro, Indiana, and he has held an Instructor I certification since 2002.
2. Prior to the submission of Olen Miller's complaint, Petitioner also served part-time on-call as the Division Chief of Special Operations and Training for the Danville Fire Department, and has served on that fire department for his entire career. The Petitioner has been a full-time firefighter since 2004. (Pet. Ex. 1 at 3.)
3. Petitioner has not previously been disciplined by Respondent for any reason during his career as a firefighter. (Pet. Br. at 1, Pet. Ex. 2, 5, and 6.)
4. On or about January 14, 2017, the Petitioner proctored a Rope Rescue Operations Test, which was being taken by two (2) students: Levi Marshall and Jacob Willis. Both students had failed the test on previous attempts. (Resp. Ex. 2-6, Pet. Br. at 1.)
5. On January 23, 2017, Olen Miller, a B Shift Captain for the Danville Fire Department, submitted a complaint via email to Jason Coffey, who serves as an Advanced Fire Service Training Manager for the Indiana Department of Homeland Security ("IDHS"). (Resp. Ex. 1.)
6. Olen Miller's complaint alleged that Petitioner proctored a "ropes test" during which he allowed the students to take the test "open book" and that he gave the answers to at least one of the students taking the test. (Resp. Ex. 1.)
7. As a result of Olen Miller's complaint, the IDHS launched an investigation into this matter and, in the course of that investigation, interviewed Petitioner on two (2) separate occasions, and also interviewed Olen Miller, Levi Marshall, and Jacob Willis. (Resp. Ex. 2-6.)
8. Petitioner admits that he provided assistance to Levi Marshall and Jacob Willis during the Rope Rescue Operations Test on January 14, 2017, by discussing the questions and answers during the test. In addition, he admits that he provided copies of the test to the students in their study materials. (Resp. Ex. 2-6, Pet. Br. at 1.)
9. On February 23, 2017, John Buckman sent a letter to Petitioner explaining that IDHS had concluded its investigation and the results would be presented to the Respondent at its next meeting. The letter then stated as follows:

Please also be advised that this meeting will not be a hearing on the merits of the case. The Board has no obligation to rule on this investigation or to take evidence. If any order is issued by the Board, notice will be provided to you and you will have the opportunity to present your case.

(Pet. Ex. 1 at 15.)

Following this paragraph, the letter provided the date, time, and location of the meeting.

10. On February 27, 2017, the Respondent held a meeting, during which John Buckman, on behalf of the IDHS, presented the results of its investigation and made recommendations to the Respondent regarding potential disciplinary options for Petitioner. (Resp. Ex. 8.)
11. Petitioner did not attend Respondent's February 27, 2017 meeting based on the representations made to Petitioner in John Buckman's February 23, 2017 letter and the fact that petitioner was out of the state at that time for work. (Pet. Ex. 1 at 2 and 16.)
12. During the meeting, the IDHS recommended that Petitioner's Instructor I and II/III certifications be suspended for two (2) years with the possibility of reinstatement after completing the Instructor I requirements. He would then have to serve a probationary period of one (1) year. The Petitioner would also have to retake the skills and written examination to have his Instructor II/III certification reinstated after the two (2) year suspension.<sup>4</sup> (Resp. Ex. 7 and 8.)
13. After some discussion, the Respondent received a motion to permanently revoke Petitioner's Instructor I and II/III certifications, which was seconded, and when the Respondent voted, the motion passed. (Resp. Ex. 8.)
14. On March 16, 2017, the Respondent issued a "Findings and Order of the Board of Firefighting Personnel Standards and Education," which stated that the Petitioner violated 655 Ind. Admin. Code 1-1-12(j)(12) and his Instructor I and II/III certifications were therefore permanently revoked. (Resp. Ex. 9.)
15. On March 22, 2017, Petitioner submitted a request for administrative review to the IDHS, and Respondent granted the request for administrative review as timely on April 3, 2017. (Resp. Ex. 10, Pet. Ex. 1.)
16. Petitioner is not appealing the permanent revocation of his Instructor II/III certification; therefore, that portion of the order is not at issue in this appeal. (Pet. Br. at 3.)
17. Petitioner will be demoted from his position of Lieutenant with the Pittsboro Fire Department if his Instructor I certification is permanently revoked. Petitioner will

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<sup>4</sup> The recommendations described in Respondent's Exhibit 7 do not match the recommendations discussed by John Buckman at the Respondent's meeting, per the meeting minutes in Respondent's Exhibit 8. Respondent's Exhibit 7 recommends revocation of the Petitioner's Instructor II/III certification, then allows for recertification after two (2) years. The recommendation in Exhibit 7 does not mention taking any action against Petitioner's Instructor I but discusses how to get that certification back. The meeting minutes in Exhibit 8 indicate that the IDHS recommended that both certifications be suspended for two (2) years, then provides for one (1) year of probation, and states that the Petitioner would have to retake the Instructor I and II/III testing to have his certifications reinstated.

also be prevented from receiving any future promotions within the Pittsboro Fire Department. (Pet. Ex. 2.)

18. Petitioner has the support of several of his colleagues, who submitted letters on Petitioner's behalf in this matter. Petitioner included eight (8) letters of support as exhibits to his brief, all from individuals who serve as either Chief or Assistant Chief for a local fire department. The individuals who submitted these letters collectively represent six (6) different fire departments in Hendricks County. All of these individuals expressed a similar sentiment in their letters: they agree that the Petitioner made a mistake, but he owned up to it, and it would be detrimental to many of these departments if they lost Petitioner as an instructor. (Pet. Ex. 2-9.)

### CONCLUSIONS OF LAW

Applying the law set forth in this decision to the factual findings supported by the evidence, the ALJ hereby reaches the following conclusions of law with respect to the issues presented:

1. Respondent in this matter seeks to impose a sanction upon the Petitioner by permanently revoking his Instructor I certification. The Respondent, therefore, bears the burdens of proof and production. Ind. Code § 4-21.5-3-14(c); Peabody Coal, 578 N.E.2d at 754.

Petitioner has a protected property interest in his Instructor I certification because he must possess this certification in order to continue his current employment as a Lieutenant. Melton v. Indiana Athletic Trainers Bd., 53 N.E.3d 1210, 1215–16 (Ind. App. 2016). Therefore, the Respondent must demonstrate by a preponderance of the evidence that the discipline imposed upon Petitioner is appropriate. Pendleton, 747 N.E.2d at 64–65; Burke, 612 N.E.2d at 565.

2. The Respondent, Board of Firefighting Personnel Standards and Education, is established by Ind. Code § 22-12-3-1. The Respondent is responsible for adopting rules that establish minimum basic training requirements for full-time and volunteer firefighters, per Ind. Code § 36-8-10.5-7.

In accordance with the rules adopted by the Respondent, it provides certification programs for fire service personnel, fire department instructors, and firefighting training and education programs. 655 Ind. Admin. Code 1-1-4.

Under those rules, the Respondent also has the authority to “take action with respect to the application for or certification of any fire service person or nonfire service person in accordance with the provisions of IC 4-21.5-3-6 and IC 22-12-7-7(4) upon information provided to the board that the fire service person or nonfire service person has: . . . (3) [f]ailed to comply with the board’s rules.” 655 Ind. Admin. Code 1-1-7(3).

3. Ind. Code § 22-12-7-7(4) permits the Respondent to impose the following sanctions with respect to holders of certificates it has issued:



- (A) Permanently revoke the license.
  - (B) Suspend the license.
  - (C) Censure the person to whom the license is issued.
  - (D) Issue a letter of reprimand to a person to whom the license is issued.
  - (E) Place a person to whom the license is issued on probation.
4. 655 Ind. Admin Code 1-1-12 sets out the application and testing procedures for certification and states that “(j) [t]he procedures for written cognitive examinations shall be as follows: . . . (12) [a] proctor shall not discuss any test question or possible answer thereto with any student taking the examination.” 655 Ind. Admin. Code 1-1-12(j)(12).

Petitioner admits that he assisted the students during the test in question; therefore, whether Petitioner committed the violation for which the Respondent seeks to discipline him is not at issue in this appeal. Rather, the issue is whether the disciplinary action Respondent seeks to impose is appropriate.

5. Therefore, in order to satisfy its burden of proof and production in this matter, the Respondent must show by a preponderance of the evidence that permanent revocation of Petitioner’s Instructor I certification is the appropriate sanction for Petitioner’s violation of 655 Ind. Admin Code 1-1-12(j)(12).

The ALJ concludes that Respondent has not met its burden.

#### The Sanction is Inappropriate

6. Respondent argues that Petitioner’s Instructor I certification must be permanently revoked because Petitioner’s actions could compromise the integrity and damage the credibility of Respondent’s certification process and the fire service in Indiana as a whole. Respondent states that it must therefore take a strong stance against this type of misconduct. (Resp. Br. at 5.)

First, Respondent argues that individuals with an Instructor I certification are authorized to “teach, evaluate, and help mold” future firefighters, and those individuals are therefore vital to the fire service. (Resp. Br. at 5.) Respondent further argues that the certifications are meant to demonstrate that the certificate holders are competent to perform the functions and skills covered by the certificates and, if firefighters are able to become certified without proper training, “the lives of the unqualified certificate holder and the individual in need of assistance are put at risk.” (Resp. Br. at 6.) Therefore, by helping two students with a written examination in violation of the Respondent’s rules, Petitioner jeopardized the certification process itself, and, more importantly, could have ultimately allowed unqualified firefighters to respond to an emergency, thereby creating a public safety issue.

Although Respondent’s general points regarding the importance of maintaining public trust in the Respondent’s certification process and that a breakdown in that

process could impact public safety are well taken, the evidence presented in this case does not support Respondent's contention that Petitioner's Instructor I certification must be revoked due to these concerns.

- a. First, Respondent states that Petitioner's Instructor I certification must be permanently revoked. However, neither the Indiana Administrative Code nor the Indiana Code mandate that the Respondent impose *any* disciplinary action at all or any specific disciplinary action as a result of a violation of its rules. 655 Ind. Admin. Code 1-1-7(b) and Ind. Code § 22-12-7-7(4).
- b. Second, Respondent contends that Petitioner's actions have compromised (or could compromise) the Respondent's certification process, but does not present any evidence to support this argument. On the contrary, the evidence shows that Petitioner has served as a firefighter for nearly 28 years and an Instructor since 2002, and this is the first and only time Petitioner has been disciplined. Furthermore, despite the violation he committed, Petitioner has the support of the leadership for many of the fire departments in Hendricks County. The letters submitted by these individuals indicate that Petitioner has been an excellent firefighter and instructor throughout his career.

It is understandable and expected that Respondent is interested in maintaining the credibility of its certification process. The fire service is an integral component of providing public safety in Indiana and it is in everyone's best interest for the individuals who are serving as firefighters to be well trained so that they are able to provide an effective response when they are needed. However, Respondent goes too far in arguing that the actions of one individual, who undoubtedly made an error in judgment, could compromise the integrity and qualifications of Indiana's entire fire service, particularly when the evidence shows the opposite: that this individual has spent a great deal of time and effort contributing to it.

- c. Finally, Respondent argues that Petitioner's actions could create a risk to public safety. In a general sense, it is reasonable to infer that certifying unqualified and untrained individuals to serve as firefighters could pose a significant risk to public safety. However, the individuals involved in this case were already firefighters who were working to obtain an advanced certification in Rope Rescuer Operations/Technician, and who had already successfully completed the skills training for that certification pursuant to 655 Ind. Admin. Code 1-1-12(e). (Resp. Ex. 2.)

Therefore, while Respondent correctly argues that, generally speaking, certifying untrained individuals could endanger the lives of the firefighter and the people that firefighter is supposed to be rescuing, the students in this case were not untrained firefighters. Rather, they were certified firefighters seeking an advanced certification, who were apparently struggling with the written exam. This does not in any way excuse the Petitioner's violation of Respondent's rules with respect to proctoring the

exam, but it also does not show that Petitioner was helping untrained and unqualified individuals obtain certifications, or that he is likely to do so in the future.

7. The evidence presented in this case demonstrates several other factors that weigh heavily against permanently revoking Petitioner's Instructor I certification.
  - a. First, Ind. Code § 22-12-7-10 requires the Respondent to be consistent in imposing sanctions and, if it is not imposing a consistent sanction, it must explain the reason for the departure from its prior decisions in its findings or order.

Respondent's order permanently revoking Petitioner's Instructor I and II/III certifications is not consistent with past orders issued by the Respondent in similar cases. For example, in 2015, the Respondent issued an order suspending an individual's Instructor I certification for two (2) years after the Respondent determined that he had taken a retest for a Fire Officer I certification without a proctor present in violation of 655 Ind. Admin. Code 1-1-12(j)(2). In re Rollins, D., DHS-1513-BFPSE-001 (2015). Additionally, in 2016, the Respondent determined that an instructor had committed several violations, including failing to complete a course as the lead instructor after he started it, failing to obtain the practical skills exam content from the Respondent, and failing to properly administer skills tests in violation of 655 Ind. Admin. Code 1-1-12(i). Several other violations were cited in the order, as well. As a result, the Respondent ordered the suspension of the individual's Instructor I and II/III certifications for one (1) year, followed by one (1) year of probation. BFPSE Order No. 0101-2015.

This appeal also involves an instructor who violated 655 Ind. Admin. Code 1-1-12. No evidence was presented in this case, or in Respondent's findings or order, explaining why this violation was more serious or why this particular individual should be sanctioned more severely than other individuals who violated the same section of the rules. (Resp. Ex. 9.)

- b. Second, although Petitioner violated the rules, the punishment the Respondent seeks to impose is disproportionate to the violation he committed. Respondent had a variety of options available to it when determining which disciplinary action would be appropriate, including censure, probation, suspension, and permanent revocation. Ind. Code § 22-12-7-7(4). However, Respondent is seeking to impose the harshest penalty available to it by permanently revoking Petitioner's Instructor I and II/III certifications. (Resp. Ex. 8 at 7-9.)

Petitioner chose not to appeal the Respondent's decision to revoke his Instructor II/III certification in acknowledgment of the violation he committed. He admits to the violation and recognizes that some sort of

punishment is warranted. Petitioner also resigned from his position as the Danville Fire Department's Chief of Special Operations and Training as a result of the complaint submitted by Olen Miller. (Pet. Br. at 3.) His resignation from this position will cost Petitioner \$15,000 in annual income. Therefore, Petitioner has already lost a substantial amount of income and rank that he earned through 28 years of service to the Danville Fire Department, as well as his ability to ever serve as a lead evaluator because he cannot obtain his Instructor II/III certification. 655 Ind. Admin. Code 1-1-13. This alone is a significant punishment even without taking any action against Petitioner's Instructor I certification.

- c. Finally, it would be detrimental to several fire departments to lose Petitioner's services as an instructor. Although Petitioner is no longer able to be a lead evaluator, he could still teach as a lead instructor with his Instructor I certification, per 655 Ind. Admin. Code 1-1-5.2. If Petitioner's Instructor I certification is permanently revoked, he will no longer be able to teach except to assist a lead evaluator as a subject matter specialist. The Chiefs and Assistant Chiefs from the fire departments that utilize Petitioner's experience as an instructor expressed awareness of Petitioner's violation but maintained their support of Petitioner and his ability to continue as an instructor for their firefighters. (Pet. Ex. 2-9.)
8. Respondent in this matter made several policy arguments against allowing Petitioner to serve as an instructor in the future; however, Respondent did not present any evidence that supports these arguments. On the contrary, the evidence shows that permanent revocation of Petitioner's Instructor I certification is not consistent with Respondent's past orders, it is disproportionate to the violation he committed, and it would not be in the public's best interest to permanently revoke this certification because it will cost many of the fire departments in Hendricks County a valued instructor. Therefore, Respondent did not meet its burden of showing by a preponderance of the evidence that Petitioner's Instructor I certification should be permanently revoked.

Petitioner's Instructor I Certification Should be Suspended for One (1) Year  
Followed by One (1) Year of Probation

9. Although Respondent's argument that Petitioner's Instructor I certification should be permanently revoked is not persuasive, Petitioner should still be disciplined for violating the Respondent's rules in a manner that is consistent with past decisions and that is commensurate with the violation he committed.
10. As a result of Petitioner's violation, Petitioner's Instructor II/III certification has already been permanently revoked and Petitioner has stepped down from his post as the Danville Fire Department's Chief of Special Operations and Training. In addition to the negative consequences described above, Petitioner's Instructor I certification should be suspended for one (1) year, at which point he will be permitted to recertify for Instructor I, per 655 Ind. Admin. Code 1-2.1-2.1, or

become reinstated, per Ind. Code § 22-12-7-9, after meeting the requirements set out in 655 Ind. Admin. Code 1-2.1-19(a), and will be placed on probation for one (1) year after becoming recertified or reinstated.

11. This sanction is consistent with Respondent's prior actions and achieves the Respondent's goal of taking a strong stance against any misconduct relating to its certification process, while also allowing Petitioner a second chance after serving as a firefighter without incident for the past 28 years. It is also consistent with Respondent's past decisions and is commensurate with the Petitioner's violation. The Respondent has the authority to impose this sanction pursuant to 655 Ind. Admin. Code 1-1-7(b)(3) and Ind. Code § 22-12-7-7(4).

### **DECISION AND NON-FINAL ORDER**

The Respondent failed to demonstrate by a preponderance of the evidence that the permanent revocation of Petitioner's Instructor I certification was the appropriate sanction in this case.

Based on the evidence presented and the applicable law, the ALJ finds that Petitioner's Instructor I certification should be suspended for one (1) year. After the suspension period, Petitioner will be eligible to recertify for Instructor I, per 655 Ind. Admin. Code 1-2.1-2.1, or may have his Instructor I reinstated, per Ind. Code § 22-12-7-9, after satisfying the requirements in 655 Ind. Admin. Code 1-2.1-19(a), and will be placed on probation for one (1) year following recertification or reinstatement.

The Indiana Board of Firefighting Personnel Standards and Education is the ultimate authority in this matter. It will consider this non-final order in accordance with the provisions of Indiana Code §§ 4-21.5-3-7 thru -29 and the Notice of Non-Final Order also issued today.

Date: September 14, 2017



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